

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

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| RONALD M. AYERS, | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | No. SA-10-CA-612 |
| | § | |
| JAMES D. DANNENBAUM, PAUL L. | § | |
| FOSTER, and PRINTICE L. GARY, | § | |
| in their Official Capacities | § | |
| as Members of the Board of | § | |
| Regents of the University of | § | |
| Texas System, | § | |
| | § | |
| Defendants. | § | |

ORDER REGARDING MOTION FOR PARTIAL RECONSIDERATION

This is a civil action for damages for injunctive and declaratory relief under 42 U.S.C. § 1983 and the Family Medical Leave Act, 29 U.S.C. § 2611 et seq. (FMLA). On August 13, 2012, Defendants filed a motion for summary judgment. On October 1, 2012, the Court granted the motion as to Plaintiff's claims under Section 1983, but did not address the FMLA claim on the grounds that Defendants had failed to move for Summary Judgment as to that claim. Defendants have filed a motion for partial reconsideration directing the Court's attention to Footnote 2 of their motion for summary judgment, which reads "[t]o the extent Plaintiff still maintains a claim under the Family Medical Leave Act, it fails for the same reasons: there is no evidence the Regents stated reasons are false, much less evidence that retaliation was the real reason." Def. Mot. For Summary J., Doc. No. 71 at 6.

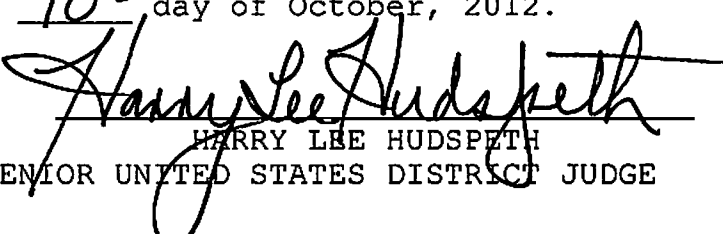
The Court notes initially that tucking an argument for summary judgment away in a footnote is an extraordinarily poor way to bring it before the Court. Nonetheless, Courts have held that raising a summary judgment argument in a footnote is sufficient to put the non-moving party on notice that the issue is part of the motion. **Turco v. Hoechst Celanese Corp.**, 101 F.3d 1090, 1093 (5th Cir. 1996). Plaintiff has not produced any evidence tending to support his FMLA claim. In fact, he did not even mention the claim in his response to Defendants' motion for summary judgment (Doc. No. 82). Because Defendants did raise the FMLA claim in their motion for summary judgment and Plaintiff failed to demonstrate a genuine issue of material fact as to that claim, Defendants' motion for partial reconsideration should be granted.

It is therefore ORDERED that Defendants' motion for partial reconsideration (Doc. No. 85) be, and it is hereby, GRANTED.

It is further ORDERED that Defendants' motion for summary judgment as to Plaintiff's claims under the Family Medical Leave Act (Doc. No. 71) be, and it is hereby, GRANTED.

It is further ORDERED that judgment be, and it is hereby, ENTERED in favor of Defendants and that Plaintiff take nothing by his suit.

SIGNED AND ENTERED THIS 10th day of October, 2012.


HARRY LEE HUDSPETH
SENIOR UNITED STATES DISTRICT JUDGE